

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

-----X	)	
IN THE MATTER OF ACCESS TO	)	
THE OLD ROOSEVELT FIELD	)	
CONTAMINATED GROUNDWATER	)	
AREA SUPERFUND SITE,	)	
	)	
	)	
TREELINE 100-400 GCP LLC,	)	ADMINISTRATIVE ORDER
	)	DIRECTING COMPLIANCE
	)	WITH REQUEST FOR ACCESS
Respondent.	)	
	)	Index Number
Proceeding under Section 104(e) of the	)	CERCLA-02-2009-2024
Comprehensive Environmental Response,	)	
Compensation, and Liability Act of 1980,	)	
as amended, 42 U.S.C. Section 9604(e).	)	
-----X	)	

I. JURISDICTION

1. This Administrative Order ("Order") is issued to Treeline 100-400 GCP LLC ("Respondent") pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e)(5), which authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 23, 1987 by Executive Order No. 12580, redelegated to the Regional Administrators of EPA on May 11, 1994 by EPA Delegation No. 14-6, and, within EPA Region 2, further redelegated to the Director of the Emergency and Remedial Response Division on November 23, 2004.

II. STATEMENT OF PURPOSE

2. This Order requires Respondent to grant EPA and its authorized representatives entry and access to the properties described in Paragraph 4 of this Order, for EPA to determine the need for response or the appropriate response or to effectuate a response action under CERCLA, at or in connection with the Old Roosevelt Field Contaminated Groundwater Area Superfund Site (the "Site"). This Order further requires Respondent to refrain from interfering with access in order that EPA, itself or through its authorized representatives, may conduct response actions pursuant to CERCLA at or in connection with the Site.



### III. FINDINGS OF FACT

3. Respondent is a limited liability company existing under the laws of the State of Delaware.
4. Respondent is the current owner of various property tax lots for which access is needed to respond to a release or threatened release of hazardous substance at the Site. These lots are shown on the tax map of Nassau County, New York, are within the boundaries of the Site, and are designated in Section 44, Block 77, as Lot 8B, Lot 8D, Lot 11B, Lot 11C, Lot 12A, Lot 12B, Lot 49, and Lot 50 (herein collectively referred to as the "Treeline Parcels"). A copy of a portion of the Nassau County tax map showing the location of the Treeline Parcels is attached hereto as Exhibit 1.
5. The Site includes a subsurface plume of contaminated groundwater located in and around the Village of Garden City ("Village"), Town of Hempstead ("Town"), Nassau County ("County"), New York. The Site is generally located on the eastern side of Clinton Road, south of the intersection with Old Country Road.
6. The subsurface plume underlies and extends beyond certain real property that had been operated from approximately 1911 to 1951 for various aviation-related activities including as an airfield, as well as for aircraft manufacturing, maintenance and repair activities and which, for most of that period, was named Roosevelt Field. Following its use for aviation activities, the area was redeveloped for other uses such as office buildings (including 100, 200, 300 and 400 Garden City Plaza, which are owned by Respondents and are located on the Treeline Parcels), a large shopping mall and freestanding retail and dining establishments, a small Village park, two recharge basins, and two Village drinking water supply wells.
7. At times during its operation for aviation-related activities, EPA believes that contaminants associated with aircraft manufacture, maintenance and repair operations at Roosevelt Field were released at the Site, contaminating the ground water. In particular, tetrachloroethene ("PCE") and trichloroethene ("TCE") were known to have been utilized in such activities and are contaminants found in the groundwater at the Site.
8. From approximately 1960 to 1985, contaminants in the groundwater at the Site were further dispersed when groundwater was pumped from seven cooling water wells located in the Site groundwater aquifer, for use in air conditioning systems at buildings on various Site properties. The pumped water was then returned to the aquifer system, via discharge to a recharge basin and to a subsurface drain field west of 100 Garden City Plaza and 200 Garden City Plaza. This is believed to have resulted in the presence of contaminants under some of the Treeline Parcels.

9. Based on, inter alia, the existence of elevated levels of TCE and PCE in groundwater at the Site, on May 11, 2000, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B), EPA placed the Site on the National Priorities List of hazardous substance releases by publication in the Federal Register at Fed. Reg. 5435.

10. In June 2000, prior to purchasing all of the Treeline Parcels except Lot 50, Respondent, which at the time was named Treeline Garden City Plaza LLC, contacted EPA to request a Prospective Purchaser Agreement ("PPA") with the Agency. After negotiation of the terms, EPA and Respondent entered into a PPA, Index No. CERCLA-02-2001-2010, in December 2000. Under the PPA, in exchange for the payment of \$400,000 and other consideration including assurances regarding continued cooperation and Site access, EPA agreed not to pursue Respondent for EPA's response costs or compel Respondent to perform work related to the existing groundwater contamination at the Site.

11. Under the PPA, Respondent agreed to grant access to EPA for future response action at the Site. Specifically, under paragraph 19 of the PPA, Respondent granted EPA an irrevocable right of access at all reasonable times to all of the parcels it was purchasing (which included all of the Treeline Parcels except Lot 50), as well as access for "any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by... Respondent." Notwithstanding Respondent's grant of access, EPA reserved all of its access rights under CERCLA.

12. Under paragraph 27.c. of the PPA, Respondent recognized that the implementation of response activities at the Site may interfere with Respondent's use of its property and may require closure of its operations or a part thereof. Paragraph 27.c. also stated that Respondent agreed to "cooperate fully with EPA in the implementation of response actions at the Site," and it agreed not to interfere with EPA response actions. At various points since entering into the PPA, Respondent has cooperated with various requests for access made by EPA pursuant to the PPA.

13. From 2001-2007, EPA conducted a Remedial Investigation/ Feasibility Study ("RI/FS") at the Site to determine the nature and extent of contamination at the Site and evaluate alternative remedies to address the contamination. Results of the RI revealed that the groundwater at the Site is contaminated with TCE and PCE above federal drinking water standards. Sampling results from the RI also indicated that the most heavily contaminated area of the groundwater plume lies underneath certain of the Treeline Parcels.

14. On September 28, 2007, EPA issued a Record of Decision ("ROD") for the Site, which selected a remedy to address the Site groundwater contamination and the threat to nearby Village drinking water supply wells, including, but not limited to, the following: a pre-design investigation to collect information for the design of the remedial action, the installation of a groundwater extraction well(s) downgradient of the area containing the highest levels of groundwater contamination to treat the contaminated plume, construction of a treatment plant with a low profile air stripper to remove contaminants, including PCE and TCE, from the

groundwater, and long-term monitoring of Site groundwater both to evaluate changes in the contaminant plume over time and to ensure achievement of groundwater standards.

15. EPA began the remedial design phase for the groundwater treatment system in the Fall of 2007. As stated in the ROD, the extraction wells would be installed downgradient of the most contaminated area of the groundwater, to capture the portion of the contaminant plume with high PCE and TCE concentrations without impacting the pumping capacity of the nearby Village drinking water supply wells. After evaluating various configurations, EPA determined that an area within Lot 50 of the Treeline Parcels was an appropriate location for the extraction wells, based on the above requirements.

16. At that time, EPA also determined that the southern parking area within Lot 8D was an appropriate location for the groundwater treatment plant and staging area, also based on the ROD's requirements, as well as the area's proximity to the extraction wells and its accessibility.

17. By letter dated September 16, 2008, EPA sought to confirm Respondent's consent for access to the Treeline Parcels under the PPA in order to construct the groundwater treatment system, including the treatment plant, three extraction wells, and influent and effluent piping to and from the wells and the plant. EPA enclosed a figure showing the proposed locations. The September 16, 2008 letter also requested access for a staging area near the treatment plant building.

18. Counsel for Respondent sent a response, by letter dated October 27, 2008, denying EPA's September 16<sup>th</sup> request for access for the construction of the groundwater treatment system on Respondent's property.

19. EPA responded to Respondent's October 27<sup>th</sup> letter with a letter dated March 5, 2009. EPA's letter reiterated EPA's request for access, both pursuant to the PPA and pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), which authorizes entry to property by EPA to respond to releases and threatened releases of hazardous substances (such as TCE and PCE).

20. EPA and representatives of Respondent met on March 24, 2009, at Respondent's offices at the Site. At that meeting, Respondent's representatives orally declined to grant EPA access to construct the treatment plant in the proposed area (the parking lot within Lots 8D and 50 of the Treeline Parcels). As an alternative location, Respondent suggested a teardrop-shaped area located in the middle of the mall/office development access roads (a teardrop-shaped area located on two lots of property hereinafter referred to as the "Teardrop Area"). Approximately half of the Teardrop Area lies on Lot 8D of the Treeline Parcels and the other half is on a separate lot owned by Simon Property Group, Inc.

21. EPA representatives then conducted a visual inspection of the Teardrop Area, which is not in active use currently, and determined it would be an appropriate alternative location for the treatment plant. In addition, representatives of Respondent present at the meeting indicated that, pending approval from Respondent's mortgagee and a partner, EPA could use Respondent's half

of the Teardrop Area for the treatment plant.

22. As a result of the March 24th meeting, EPA revised its design of the remedial action and by cover letter dated April 22, 2009, sent Respondent a copy of the remedial design, describing the access needed to implement the remedial action. EPA enclosed with the letter a Consent to Access Form, requesting access needed for the construction of the treatment plant, installation of three extraction wells and the associated piping to and from the treatment plant, two monitoring wells, staging for construction activities, and egress and ingress to and from the Site. EPA requested that Respondent sign the form and return it to EPA.

23. Notwithstanding EPA's willingness and agreement to accept the change in location as requested by Respondent, in numerous subsequent communications between EPA and Respondent, Respondent has continued to object to EPA's request for access.

24. On June 8, 2009, EPA reiterated its request that Respondent sign the consent to access form, this time requesting that Respondent return it to EPA by June 15, 2009 if Respondent wished to consent to access for the remedial action.

25. As of the date of issuance of this Order, Respondent has failed to sign the Consent to Access Form and has refused to grant EPA's requested access needed to implement the remedial action at the Site, including construction of the treatment plant, installation of the extraction and monitoring wells, and installation of underground piping.

26. More specifically, in order to implement the remedial action selected for the Site in the ROD, EPA requires access to the Treeline Parcels as follows:

(a) Access to Lot 8D (1) to construct, operate, and maintain a groundwater treatment plant (currently estimated to be 120 feet by 70 feet in size) and its associated fencing, approximately 70% of which will lie on property owned by Respondent, (2) to install underground piping to and from the treatment plant that will be six to eight inches in diameter, buried approximately four feet below the ground surface, and (3) to establish a staging area currently estimated to be 100 feet by 120 feet during the period of construction;

(b) Access to Lot 50 (1) to install, operate and maintain three extraction wells that will be under a cover currently estimated to be 6 feet square and flush with the ground surface but surrounded by fencing, resulting in a fenced-in area currently estimated to be 40 feet by 15 feet, (2) to install two monitoring wells, which will be under a cover currently estimated to be 10-12 inches in diameter and flush with the ground surface, and (3) to lay underground piping from the extraction wells to the treatment plant;

(c) Access to Lots 8B, 11B, 11C, 12A, 12B, 49 and 50 of the Treeline Parcels for ingress and egress at the Site; and

- (d) Access for any other response action (as defined in Section 101(25) of CERCLA) which EPA determines is necessary to implement the remedy set forth in the ROD.

While EPA reserves its rights to determine a different time frame for the duration of the response actions referenced in this Paragraph, it currently anticipates that their duration will be as follows: (1) with respect to the staging area, the construction of the extraction wells, and groundwater treatment system, from one to two years; (2) with respect to the operation of the groundwater treatment system, including the extraction wells, treatment plant and piping, from ten to fifteen years, pursuant to the estimate in the ROD for cleaning up the groundwater at the Site to drinking water standards; and (3) with respect to sampling the monitoring wells, for the period needed to conduct long-term monitoring of conditions at the Site, which will be determined during the implementation of the remedial action.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

27. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
28. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
29. PCE and TCE are each a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
30. EPA has a reasonable basis to believe that releases of hazardous substances have occurred into the environment at or from the Site or threaten to be released into the environment at and from the Site within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1), as the terms "environment" and "release" are respectively defined in Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22). Such releases and threats of releases include, but are not limited to, releases and/or threatened releases of PCE and TCE that are present in Site groundwater, as described in Paragraphs 7, 8, and 13 of this Order and as further described in the ROD.
31. For purposes of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3), the Treeline Parcels, as part of the Site, constitute a facility, establishment, or other place or property:
- (A) where a hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from;
  - (B) from which or to which a hazardous substance or pollutant or contaminant has been or may have been released;
  - (C) where such release is or may be threatened; and

(D) where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under CERCLA.

32. EPA has requested that Respondent grant access to the Treeline Parcels at the Site for the purposes set forth in Paragraph 26 of this Order, but Respondent has not consented to such request within the meaning of Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5).

#### V. ORDER

33. Based on the Findings of Fact and Conclusions of Law and Determinations set forth above and the entire Administrative Record, EPA has determined that there is a reasonable basis to believe that (1) there may be or has been a release or threat of release of a hazardous substance or pollutant or contaminant at the Treeline Parcels within the meaning of Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), (2) access to the Treeline Parcels is needed by EPA and its designated representatives to determine the need for response or the appropriate response or to effectuate a response action under CERCLA, (3) EPA is authorized to enter the Treeline Parcels pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and (4) EPA's requests for consent to such access have not been granted.

34. Respondent and any and all employees, agents, and all other persons under the direct or indirect control of Respondent, including lessees, shall afford EPA and its officers, employees, and designated representatives, including but not limited to contractors and subcontractors, full and unrestricted access to the Treeline Parcels for the purpose of conducting the activities referred to in Paragraph 26 above. Respondent shall provide such access for such period of time as is specified in Paragraph 26, or longer if reasonably necessary for EPA to complete those activities.

35. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Treeline Parcels pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

36. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, permits or the PPA.

37. This Order shall apply to and be binding upon Respondent and its respective heirs, successors and assigns, and upon each agent of Respondent, and it shall apply and be binding upon all other persons and entities who are under the direct or indirect control of Respondent, including any and all lessees of Respondent.

38. In the event of any conveyance by Respondent, or Respondent's agents, successors, or

assigns, of an interest in any portion of the Treeline Parcels, Respondent and Respondent's agents, successors and assigns shall not convey the interest in any manner which would have the effect of hindering or otherwise limiting continued access by EPA and its representatives to the Treeline Parcels for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Treeline Parcels so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives referred to in Paragraph 26. Respondent shall notify EPA in writing at least thirty (30) calendar days prior to the conveyance of any interest in such property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

39. Nothing herein shall constitute or be construed as a satisfaction or release from liability with respect to any conditions or claims arising as a result of past, current, or future operations, ownership or use of the Site by Respondent, its agents, contractors, successors, or assigns.

#### VI. ENFORCEMENT

40. Respondent is hereby advised that, pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and the regulations promulgated thereunder, including the Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75,320 (December 11, 2008), a court may assess civil penalties of not more than \$37,500 per day for each day that Respondent fails to comply with this Order or any part hereof.

41. Nothing herein shall preclude EPA from taking any additional enforcement actions and/or other actions it may deem necessary for any purposes, including actions relating to the prevention or abatement of an imminent and substantial danger to the public health, welfare, or the environment arising from conditions at the Site, and recovery of the costs of such actions.

42. Nothing in this Order constitutes a waiver, a bar, a release, a satisfaction of or a defense to any claim or cause of action which EPA has now or may have in the future against Respondent or any other entity.

43. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to, or take any other administrative or civil action against Respondent or any other parties with respect to this Site or any other site.

44. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

#### VII. ADMINISTRATIVE RECORD

45. The Administrative Record supporting the above Findings of Fact, Conclusions of Law, and Determinations is available for review on weekdays between the hours of 9:00 a.m. and 5:00



p.m. at the offices of the United States Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866. Respondent should contact Elizabeth Leilani Davis, Esq. of EPA's Office of Regional Counsel at (212) 637-3249, if it wishes to schedule an appointment to review the Administrative Record.

#### VIII. OPPORTUNITY TO CONFER

46. Respondent may request a conference with EPA if such request is made within five (5) business days after receipt of this Order by Respondent. If a request for a conference is made, such conference shall be held no later than five (5) business days after the request. The conference shall be held at EPA offices at 290 Broadway, New York, New York, or at the request of Respondent, it may be held by telephone. The conference may address any matter pertinent to this Order, including its applicability, the factual findings, the determinations or conclusions of law upon which it is based, or any other relevant and material issues or contentions which Respondent may have regarding this Order. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two (2) business days before the effective date of this Order if Respondent does not request a conference. EPA will deem Respondent to have waived its rights to the conference or to submit written comments if Respondent fails to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

Elizabeth Leilani Davis  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17th Floor  
New York, NY 10007-1866  
(212) 637-3249  
(212) 637-3104 (fax)  
Davis.Leilani@EPA.Gov

#### IX. EFFECTIVE DATE: COMPUTATION OF TIME

47. This Order shall become effective seven (7) business days after the Order is received by Respondent or its legal representative, unless a conference is timely requested as provided above. If a conference is timely requested, then after the conference, if EPA determines that no modification to this Order is necessary, the Order shall become effective upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective as set forth in the notification by EPA of such modification.

48. The EPA notifications under this Paragraph may, at EPA's discretion, be sent by facsimile, by electronic mail, or by oral communication, provided that if EPA makes the

notification orally, EPA will send Respondent a written confirmation of such oral notification. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

49. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

#### X. NOTICE OF INTENTION TO COMPLY

50. Within three (3) business days after the effective date of this Order, Respondent shall provide written notice to EPA stating whether it intends to comply with the terms hereof. Such notice shall be sent to:

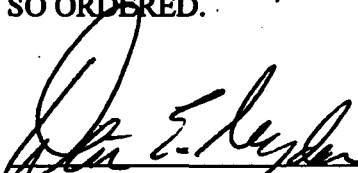
Elizabeth Leilani Davis  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17th Floor  
New York, NY 10007-1866.

Such notice may be submitted by facsimile at (212) 637-3104 provided that the original of the notice is also mailed to EPA. In the event that Respondent fails in a timely manner to provide such notice, or if Respondent's notice does not unequivocally state that Respondent intends to comply with this Order, Respondent shall be deemed not to have complied with the terms of this Order.

#### XI. TERMINATION

51. This Order and all of its terms and provisions shall remain in effect until the Director of the Emergency and Remedial Response Division, EPA Region 2, or his designee, notifies Respondent in writing that access to the Treeline Parcels is no longer needed for the purposes provided in this Order.

SO ORDERED.

  
Walter E. Mugdan, Director  
Emergency and Remedial Response Division  
United States Environmental Protection Agency,  
Region 2

June 16, 2009  
Date of Issuance

**Exhibit 1**

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CLINTON + E 2,105 400

ROAD

VILLAGE OF CLINTON

